IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 666 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAZ CINEMA

Versus

STATE OF GUJARAT

Appearance:

MR SR SHAH for Petitioners

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. The petitioner is owner of a cinema theatre and by this petition under Article 227 seeks quashing of the order dated 18-12-1986 passed in exercise of powers of revision under Section 13 of the Gujarat Entertainment Tax Act, 1977.

2. The prescribed Authority (Mamlatdar, Jamnagar) passed an order on 26/30-4-1986 holding that the petitioner was liable to pay entertainment tax only in the sum of Rs. 1701.90ps and not Rs. 51,430.40ps as was sought to be levied in the impugned show cause notice issued to him. The above order of the prescribed Authority cum Mamlatdar was taken up in revision by the State Government through its Deputy Secretary under Section 13 of the Act.

3. Learned counsel appearing for the petitioner raised the ground of limitation. It is stated that the revisional power could not have been exercised after expiry of period of two years from the date of the impugned order of the Mamlatdar. The provisions of Section 13(2) which contain the prescribed period of limitation of two years as it stood at the relevant time, reads as under:

"13. Revision of order : The State Government may of its own motion, call for and examine record in a proceedings under this Act for the purpose of satisfying itself as to legality or propriety of any order passed therein by the prescribed Officer, or as the case may be appellate authority and if it shall appear to it that any order passed therein requires to be modified, annulled or reversed, it may after giving the proprietor affected by such order, an opportunity of being heard and after making or causing to be made such inquiry as it may necessary pass such an order thereon as the circumstances of the case justified:

Provided that no record of any proceedings of the prescribed officer shall be called for:

(i) in a case where an appeal from order is therein has been made, when such appeal is pending;

(ii) in a case where an appeal has not been made from such order before expiry of the time prescribed for making such appeal.

(2) No order shall be revised under sub-section (1) after expiry of two years from the date of such order.

EXPLANATION: In computing the period of limitation for the purpose of subsection (2) and (3):-

(a) any period during which the record of proceeding shall not be called for under the

proviso to subsection (1) and

(b) any period during which any proceedings under this section is stayed by an order of injunction of any civil court shall be executed.

(3) The Commissioner of Entertainment Tax may, on the application of any aggrieved proprietor made in that behalf, exercise the power of the State Government under section (i).

Provided that no application under this subsection or any aggrieved proprietor or revision of any order, shall be entertained by the Commissioner after expiry of two years from the date of such order unless the commissioner is satisfied that the proprietor was prevented by an insufficient cause from making an application within that period."

4. I have also heard learned counsel appearing for the State and gone through the reasoning of the Revisional Authority on the plea of limitation. According to the Revisional Authority the order of Mamlatdar was passed on 26/30-4-1984 and a proposal by the Department to take up the matter in revision having been initiated on 16-3-1985 within the prescribed period of two years the Revisional proceedings cannot be held to be barred by time.

5. The plain reading of subsection (2) of Section 13 and Explanation A and B thereunder shows that the time spent from the date of proposal by the Department to the Revisional Authority to the actual date of issuance of notice for revisional proceedings cannot be excluded for computing the prescribed period of two years. Explanation (a) permits only the period referred in subsection (1), of appeal to be excluded from computing the prescribed period of two years for revision. Explanation (b) under subsection (2) permits exclusion of period during which any proceedings under the Act remained stayed by an order of injunction of any Civil Court.

6. In the present case, none of these contingences exists. The order of prescribed authority was passed on 30-4-1984. The show cause notice for revision was also issued after prescribed period of 2 years on 28-7-1986 and the final order in revision was also passed beyond that period on 18-12-1986. The issuance of proposal of the Department on 16-5-1985 for initiating the proceedings would not save the prescribed period of limitation. This court finds that the reasoning adopted by the revisional authority is erroneous in treating the

revision to be in time.

7. Consequently, the Special Civil Application is allowed. The impugned order of the Revisional Authority dated 18-12-1986 at Annexure C is hereby quashed.

Rule is made absolute. In the circumstances, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

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